

EOD 9-11-00

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

FILED-CLERK
U.S. DISTRICT COURT
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TX EASTERN-BEAUMONT

GUSTAVO JULIAN GARCIA,
Petitioner,

v.

**GARY JOHNSON, DIRECTOR,
TDCJ-ID,**
Respondent.

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Civil Action No. 1:99 cv 134


BY BC

ORDER

This matter comes before the Court on Petitioner Gustavo Julian Garcia's ("Garcia's") petition for a writ of *habeas corpus*, filed on August 23, 1999, and supplemented on August 16, 2000. The Court, having considered the pleadings, the record and the applicable law, and noting that Respondent confessed error as to Garcia's claim that the Court allowed improper testimony by the state's expert witness at Garcia's sentencing hearing, finds that the Petition is well-taken in part and it will be granted in part. *See Saldano v. Texas*, __ U.S. __, 120 S.Ct. 2214 (2000).

IT IS THEREFORE ORDERED that a writ of *habeas corpus* issue to the Respondent, directing him to release Garcia from his custody unless the State of Texas, within 180 days from the date of entry of this Order, conducts a new sentencing hearing for Garcia. The other claims in Garcia's Petition are dismissed without prejudice.

SIGNED this 6 day of September, 2000.


THAD HEARTFIELD
UNITED STATES DISTRICT JUDGE